

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DARRYL CHALMERS, DARREN CONNORS,
GLENN MENDEZ, JAMES NOVA, and
FATIMA Q. ROSEMOND, on behalf of themselves
and all other similarly situated, and

AFSCME DISTRICT COUNCIL 37 LOCAL 2507,
on behalf of its members,

Plaintiffs,

v.

CITY OF NEW YORK,

Defendant.

Civil Action No.: 20-cv-03389 (AT) (GWG)

**PLAINTIFFS' MOTION FOR (A) CERTIFICATION OF A CLASS AND SUBCLASS,
(B) APPOINTMENT OF CLASS COUNSEL, AND (C) EXCLUSION
OF THE REPORT AND TESTIMONY OF DR. CHRISTOPHER ERATH**

The five individual plaintiffs (Darryl Chalmers, Darren Connors, Glenn Mendez, James Nova, and Fatima Rosemond), by their undersigned attorneys, move the Court pursuant to Federal Rule of Civil Procedure 23 and Federal Rule of Evidence 702 to certify a proposed class and subclass, appoint class counsel, and exclude the City of New York's (the "City's") expert report and testimony from consideration in connection with the class certification motion, all as defined in more detail below.

The proposed class is "all persons who have been employed by the City as fire protection inspectors or associate fire protection inspectors (together "FPIs") in the Fire Department of New York ("FDNY") at any time between May 1, 2017 (three years prior to the filing of the Complaint) and the date a class is certified." Plaintiffs propose that the class be certified to pursue the claim

that the City intentionally discriminated in compensation against the class members because they were primarily racial minorities, as reflected in comparisons of their compensation to that paid to persons employed by the City as inspectors (collectively “BIs”) in the City’s Department of Buildings (“DOB”).

The proposed subclass is “all persons who do not self-identify as white and who have been employed by the City as FPIs in the FDNY at any time between May 1, 2017 and the date a subclass is certified.” Plaintiffs propose that the subclass be certified to pursue the claim that the City’s policies and practices identified in the Plaintiffs’ accompanying memorandum of law had a disparate impact in compensation against the subclass members in that the subclass members were paid less than BIs, who had at least 60% larger percentages of white employees than did FPIs each year.

Next, Plaintiffs move that their counsel, the undersigned lawyers from the firms of Mehri & Skalet PLLC and Valli Kane & Vagnini LLP, be appointed as class counsel pursuant to Fed. R. Civ. P. 23(c)(1)(B) and 23(g).

Finally, Plaintiffs ask that the Court exclude the report and testimony of the City’s expert, Dr. Christopher Erath, as not meeting the standards set out in Fed. R. Evid. 702.

The Court has authorized this motion in several Orders, including most recently the Order dated August 19, 2021 (ECF No. 60).

Factual support for this motion is contained in Exhibits 1-50. An accompanying memorandum of law sets out the factual and legal bases for the motion. The Court authorized a 50-page memorandum in the August 19, 2021 Order.

A courtesy copy of the motion, memorandum, and exhibits will be sent to the Court at 500 Pearl Street, New York, NY 10007 pursuant to Section III.H of the Court's Individual Practices in Civil Cases.

Dated: August 30, 2021

Respectfully submitted,

/s/ Michael D. Lieder

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CERTIFICATE OF SERVICE

I herby certify that on August 30, 2021, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, and I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Dominic Charles
Dominic Charles